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IN THE

Supreme Court of the United States

October Term, 1966
No. 654

ROBERT E. RUTHERFORD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner presents his petition for rehearing of this Court's order denying the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, which became final on August 11, 1966, and in support of such petition, respectfully shows:

The Court should reconsider its order in denying a petition for writ of certiorari because:

1. Since 1955 the government of the United States has been entitled to file civil actions for damages sustained in violation of antitrust laws. §4A, Clayton

Act; 15 U.S.C. § 15a.) The decision in *Rutherford v. United States of America* holds that the government may grant immunity in such a civil suit. The Ninth Circuit has so held. This is a procedure of such extreme importance to the business interest of the nation that the rule should be declared by the Supreme Court of the United States.

2. The reasoning of the Court required a holding that a civil antitrust damage action constitutes enforcement of the antitrust laws and is a proceeding or suit within the meaning of the Antitrust Immunity Statute (15 U.S.C. § 32).

> "Our holding is based on the conclusion that a civil antitrust damage action constitutes enforcement of the antitrust laws and is a 'proceeding,' or 'suit' within the meaning of 15 U.S.C. § 32.
>
> . . .
>
> The Senate report accompanying the bill which ultimately became 15 U.S.C. § 15a, contains language which makes it clear that Congress considered private antitrust actions to be of prime importance in the enforcement of the antitrust laws and the nation's antitrust policies.
>
> The Government by statute has been accorded the status of a private party for purposes of instituting damage actions. If private actions generally are viewed as vehicles for enforcing the nation's antitrust laws, it is difficult to conclude that Government damage actions do not also enforce the antitrust laws. . . ." (Appendix, Pet. for Writ of Certiorari, pp. 14, 15.)

Lawyers and legal writers have always assumed that the Antitrust Immunity Statute could not be applied to a civil proceeding. This appeared to be the holding in *H. Wagner & Adler Co. v. Mali*, 74 F. 2d 666. The above statement by the Court of Appeals for the Ninth Circuit creates a conflict between the circuits. Some circuits may apply the Antitrust Immunity Statute to private suits, others may not. The language of the opinion of the Ninth Circuit would appear to permit a plaintiff in a private antitrust suit to grant immunity to witnesses. Such uncertainty can only be relieved by a decision of this Court.

Conclusion.

Petitioner requests this Petition for Rehearing be granted so that the Court may resolve this important question of law as to whether or not the Antitrust Immunity Statute applies to civil antitrust proceedings.

Respectfully submitted,

JOSEPH A. BALL,
BALL, HUNT & HART,
Counsel for Petitioner.

R. MAX ETTER,
Of Counsel.

Certificate of Counsel.

I, Joseph A. Ball, counsel for the above named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and it is restricted to the grounds specified above.

JOSEPH A. BALL,
Counsel for Petitioner.